

(1963) 12 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No. 1108 of 1961

B.A. Mallya

APPELLANT

Vs

The Commissioner, Corporation of Madras

RESPONDENT

Date of Decision : 18-12-1963

Acts Referred:

Madras City Municipal Act, 1904 — Section 100

Citation : (1964) ILR (Mad) 563

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : S.K.L. Ratan, for the Appellant; G.V. Subramaniam for Mr. T. Chengalvarayan, for the Respondent

Final Decision : Allowed

Judgement

Srinivasan, J.—The petitioner is the owner of premises Nos. 4/1, 4/1-A and 4/1-B Gandhi Irwin Road, Egmore, Madras. These three

premises had been constructed on different dates and had been entered in the registers of the Municipality as distinct premises, separate annual

valuation also having been fixed for each of the premises. No. 4/1 was the first of the premises to be constructed and its annual valuation was fixed

at Rs. 546. That has been the position since February, 1957. The premises No. 4/1-A was completed in June 1957, and its annual valuation has

been Rs. 437. Premises No. 4/1-B was completed in September, 1958, and the annual valuation thereof was fixed at Rs. 601. It appears also that

a room was constructed on the top floor of the last mentioned premises in January, 1960. In September 1960 the Revenue Officer, Corporation of

Madras, issued a notice to the petitioner to the effect that it was proposed to club these premises as a single unit and to fix the total annual

valuation of these buildings at Rs. 1911. The petitioner objected and appealed to the Commissioner but apparently to no effect. It is in these

circumstances that the present petition has been filed challenging the jurisdiction of Commissioner to club the three premises together and make a

single assessment in respect of them. It is contended that the Revenue Officer of the Corporation has no jurisdiction to do so.

2. On behalf of the respondent Corporation, it is stated that three door numbers formed a single property with a common terrace under a single

ownership. It is not denied that the buildings were constructed at different times and that different tenants are occupying these premises. But it is

alleged that despite these features they do not constitute different buildings. It is the contention of the Municipality that S. 100(1) of the Madras

City Municipal Act enables the respondent to order a single assessment being made upon these premises. It is also contended that as the petitioner

has a right of appeal to the Taxation Appeals Committee, relief in the exercise of the writ jurisdiction of this Court, should not be extended to him.

3. The point for decision lies in narrow compass. It is not denied that the properties belong to a single owner. That they have been constructed on

different dates and have been previously assessed as distinct premises are not in dispute. Though it is not specifically averred it also seems to be

admitted that different tenants are occupying the premises. The short question is whether in these circumstances the Corporation can make a single

assessment.

4. The respondent relies upon S. 100 of the Madras City Municipal Act in this regard. Sub-S. (1) of this section reads thus:

Every building shall be assessed together with its site and other adjacent premises occupied as appurtenances thereto unless the owner, of the

building is a different person from the owner of such site premises.

5. From this section the following appear to emerge. A building is always assessed along with the site it stands upon unless the ownership of the

two vests in different persons. In the present case we have not the complication of different ownership so that we can ignore that part of the

provision. We may also leave out any consideration of the site. The section enjoins that a building shall be assessed together with ""other adjacent

premises occupied as appurtenances thereto"". The question then is whether any

one of these premises can be regarded as the principal building and the other buildings regarded adjacent premises occupied as appurtenance thereto. The feature that is relied upon by the respondent is that they have a common terrace. The mere fact that the manner of construction has led to that result cannot immediately make one or other of these buildings appurtenant to the other. Even this statement has been denied by a reply affidavit filed by the petitioner wherein it is pointed out that door No. 4/1 and door No. 41-A have got their terrace at the same level while door No. 4/1-B has a terrace which is 2 feet higher than the terrace of the other two buildings. This structural feature alone cannot be relied upon for purposes of interpreting this provision. What has to be interpreted is the expression "adjacent premises occupied as appurtenances thereto." Taking 4/1 as the main building, it is certainly true to say that 4/1-A 4/1-B are adjacent premises. But that alone will not suffice to invite the application of the section. It is necessary to go further and establish that these adjacent premises are occupied as appurtenances thereto. The expression "thereto" is of considerable significance in the context. "Thereto" refer to the main building. It must therefore be found that the occupation of 4/1-A and 4/1-B is as appurtenances to the main building. This necessitates an examination of what the expression "appurtenances" really signifies.

6. Even without having regard to any books upon the subject it seems to be fairly clear that a facility which is attached to a main building can be regarded as an appurtenance to that building. We may instance such features as a garage or buildings of that description, the occupation of which is associated with the occupation of the main building itself. If the occupation of what is called the appurtenances is not in connection with the occupation of the main building it is very difficult to reach the consequence required by this particular provision. That appurtenances have a special significance in the context in which the expression is used is established by the meaning given to that expression in law. At page 529 of Vol. 3-A of Words and Phrases (West Publishing Co.) "appurtenance" is generally indicated as a thing belonging to another thing as principal and which passes as incident to the principal thing. It is also defined as any minor thing as belonging or attached to a principal one, as serving some useful purpose, as accessory, or adjunct; subsidiary; annexed; incident. Pursuing the same analogy,

it is also defined as a thing used with and related to or dependent upon something else which is the principal. In fact, the legal meaning attached to this expression really follows its ordinary commonsense meaning.

8. Now, turning again to this section, the section clearly requires that the occupation of these adjacent premises must be an appurtenance to the main building. In the present case, learned Counsel for the corporation frankly concedes that he cannot maintain that position. He would only place emphasis upon the fact that the buildings belong to a common owner and that two at least of these buildings have, what may be called a common roof. It is certainly not a common proof in the strict sense of the term as the two structures 4/1 and 4/1-A were constructed at different times. The only feature is that their terraces are at the same level. These are not sufficient to show that these premises are occupied as appurtenances to the main building which, for purposes of this case, we may consider to be door No. 4/1. It follows, therefore, that the reliance that has been placed on S. 100 of the City Municipal Act by the respondent cannot be supported. No other ground has been advanced to support the action of the respondent in clubbing these premises together. If the respondent cannot rely upon any provision other than S. 100, it is clear that that section gives no support to the action of the respondent. The petition is accordingly allowed. The rule is made absolute. There will, however, be no order as to costs.